

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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BRUCE KNIESPECK,  
Plaintiff,

NO. CIV. 2:01-0878 WBS EFB

v.

ORDER RE: MOTION FOR RELIEF  
FROM JUDGMENT

UNUM LIFE INSURANCE COMPANY OF  
AMERICA, et al.,

Defendants.

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On December 21, 2006, this court entered judgment in favor of plaintiff pursuant to a two-phase bench trial and awarded plaintiff partial disability benefits in the amount of \$171,200.00 and "benefits going forward, conditioned on the requirements of the Policy as interpreted by [the Court's] order." (Docket Nos. 71, 72.) In a separate Order dated February 12, 2007, based on the fact that plaintiff was the prevailing party under its previous order, this court awarded plaintiff attorneys fees and costs in the amount of \$55,502.50

1 and prejudgment interest in the amount of \$27,147.19. (Docket  
2 No. 101.) On January 14, 2009, the United States Court of  
3 Appeals for the Ninth Circuit vacated and reversed this Court's  
4 December 21, 2006 judgment. (Docket No. 109.) Defendant now  
5 brings this unopposed motion to vacate this court's February 12,  
6 2007 Order pursuant to Federal Rule of Civil Procedure 60(b)(5)  
7 as based on an earlier judgment that has been reversed or  
8 vacated.

9 Rule 60(b)(5) provides that the court may relieve a  
10 party from a final judgment or order if "it is based on an  
11 earlier judgment that has been reversed or vacated." Fed. R.  
12 Civ. P. 60(b)(5). The appellate court's reversal and vacatur of  
13 this court's December 21, 2006 judgment clearly prevents it from  
14 "spawning any legal consequences," by an award of attorneys fees  
15 and costs to a party who has no longer prevailed. United States  
16 v. Munsingwear, 340 U.S. 36, 40-41 (1950).

17 IT IS THEREFORE ORDERED that defendant's motion for  
18 relief from judgment be, and the same hereby is, GRANTED. The  
19 order of February 12, 2007, awarding plaintiff attorneys fees and  
20 costs is hereby VACATED AND SET ASIDE.

21 DATED: October 13, 2009

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24 WILLIAM B. SHUBB

25 UNITED STATES DISTRICT JUDGE  
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